



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
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November 19, 2009

## TECHNICAL STAFF REPORT

*Petition Originally Accepted on May 16, 2006  
Taken Off Unscheduled Docket on May 27, 2009  
Planning Board Meeting of December 3, 2009  
Zoning Board Hearing to be scheduled*

**Case No./Petitioners:** ZB 1064M – Thomas & Leslie Fraley

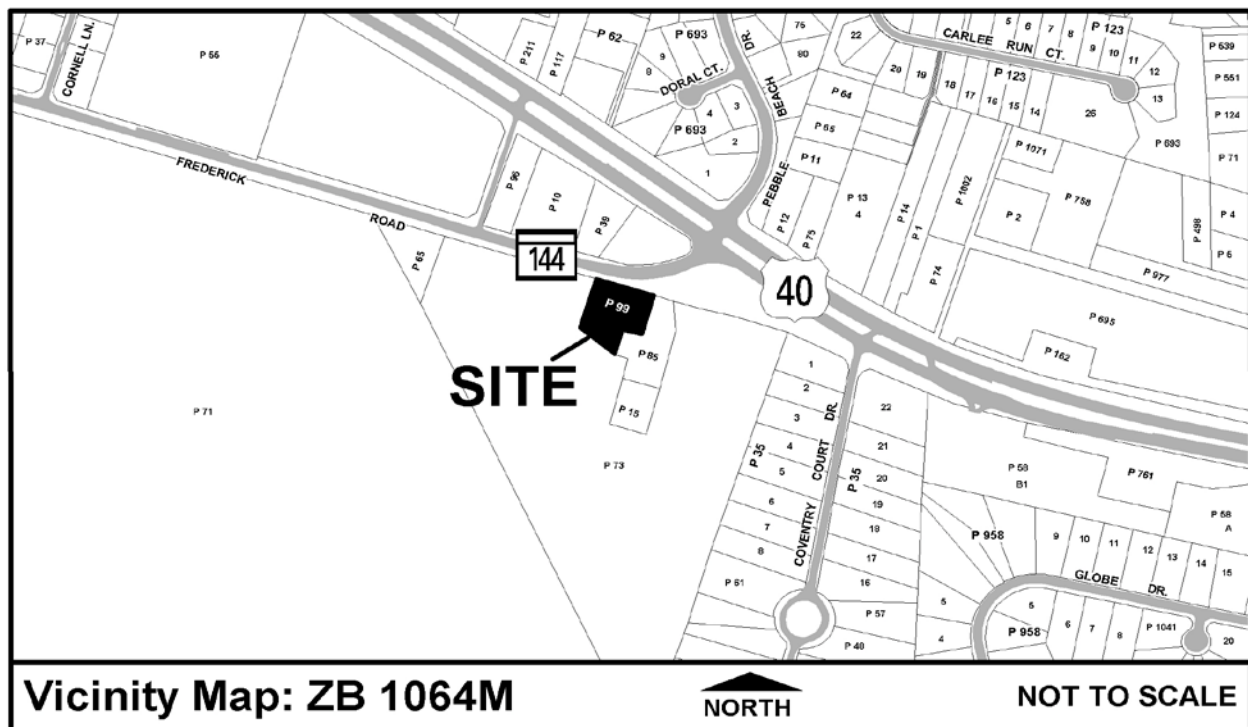
**Location:** Second Election District  
South side of MD 144, southwest of the MD 144 intersection with US 40  
Tax Map 23, Grid 6, Parcel 99; 10459 Frederick Road  
(the "Property")

**Area of Site:** 36,851 square feet

**Current Zoning:** R-20 **Proposed Zoning:** B-1

**Department of Planning and Zoning Recommendation:**

**DENIAL**

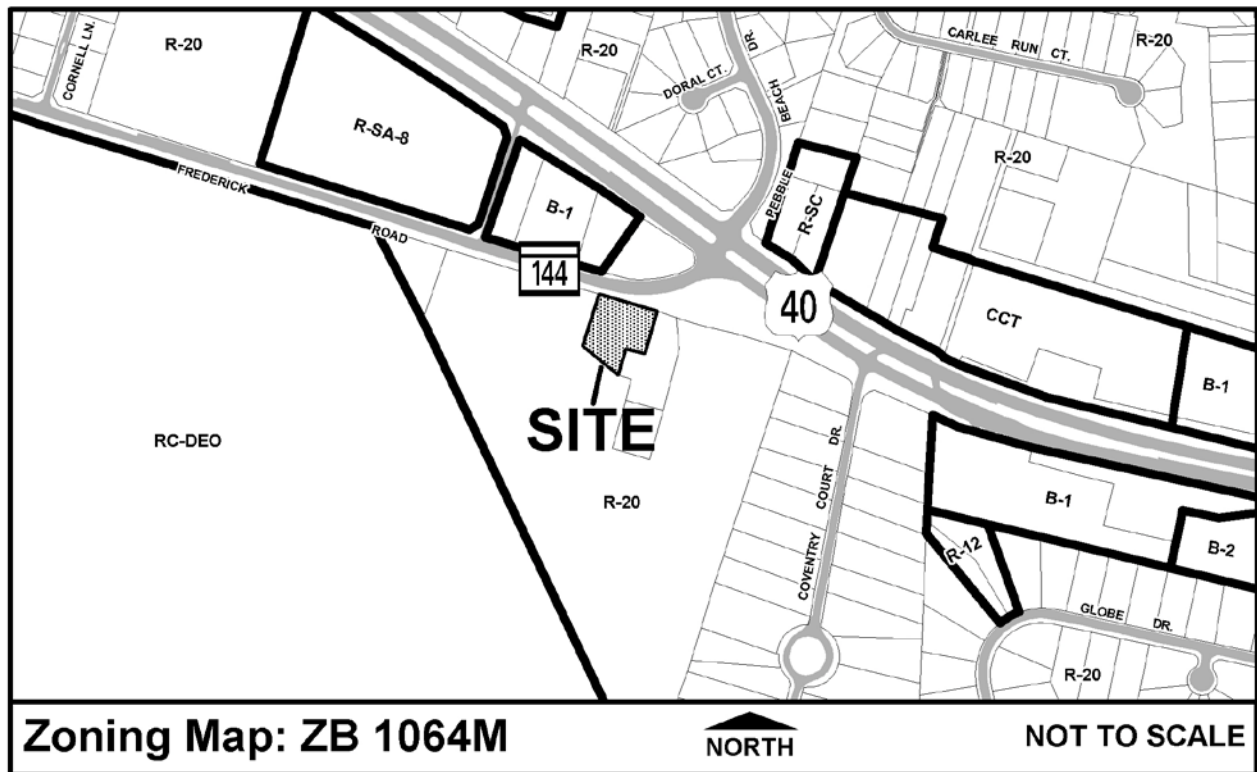


**I. DESCRIPTION OF PROPOSAL**

- # **The Petitioners proposes a Zoning Map Amendment to rezone the Property from the current R-20 (Residential: Single) District designation to the B-1 (Business: Local) District. As justification for this request, the Petitioners include allegations of both substantial change in the character of the neighborhood (“Change”) and mistake in the zoning designation (“Mistake”).**
- # **The Petitioners contend that “...the cumulative effect of changes in the neighborhood have made the residential use and zoning of their property inappropriate...”.**

Adjoining the Property on the west side, and also to the south and east of the Property and two other lots, is the Kiwanis/Wallas Park (the "Park"), which includes multiple ball fields, parking areas, and accessory buildings.

The Petitioners maintain that the use of the Park by the Howard County Youth Program ("HCYP") has intensified since the 2004 Comprehensive Zoning Plan ("2004 CZP") with the installation of playing field lighting near the Property, and an increase in Park generated traffic due to the extended use of the playing fields, and that the Property is no longer suitable for residential use or zoning due to this intensification.

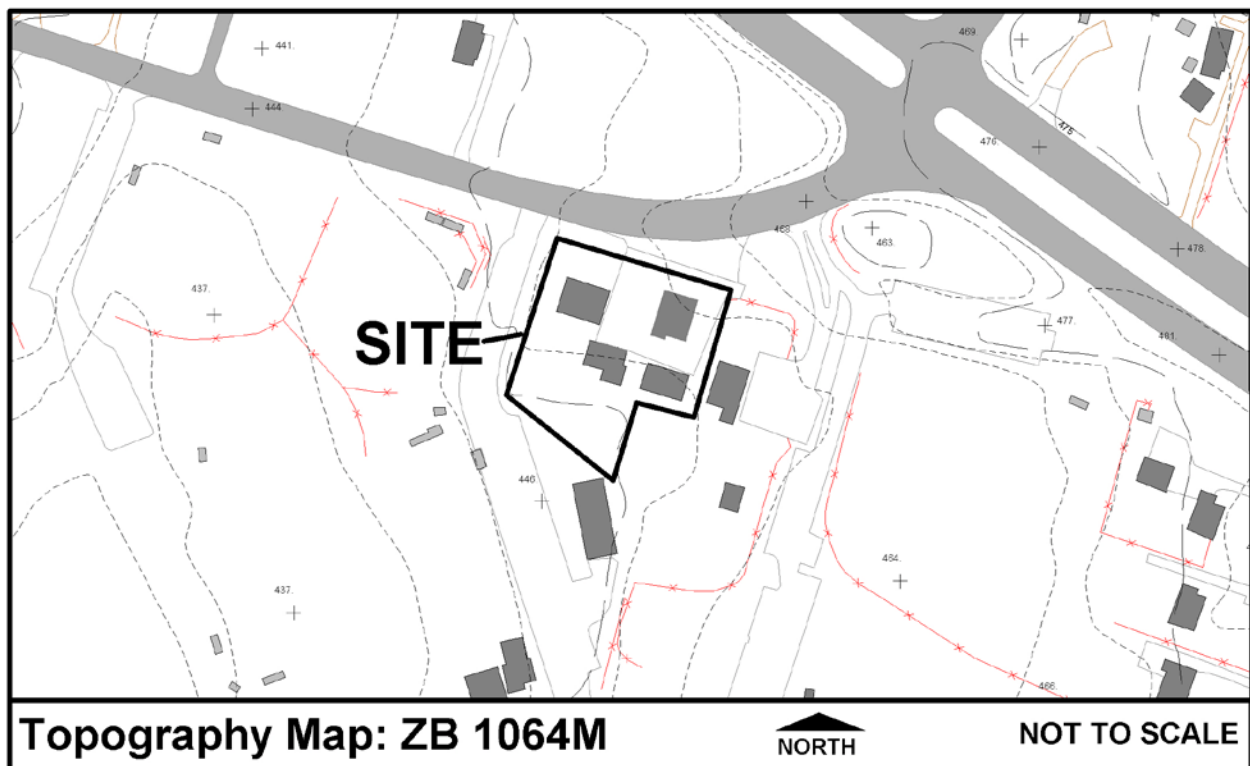


## I. DESCRIPTION OF PROPOSAL

- # In emphasizing the intensity of use associated with the adjoining Park, the Petitioners note that it "...now has 12 [ball] fields and two batting cages, most of which are used every day of the week during the season for games and/or practice as early as 8:00 a.m. and as late as 10:00 p.m. Seven of the fields have lights to enable night play."

The Petitioners describe how the Park also functions as a type of outdoor social facility for the families of the children that participate in the HCYP, which causes more traffic and activity above and beyond what is generated by the outdoor sport use alone.

In addition, it is pointed out that the building on the Park property "...has been a meeting hall utilized for the organizational activities of the Kiwanis Club, HCYP and any citizen organization desiring to rent the facility for wedding receptions, dances and other meeting purposes."



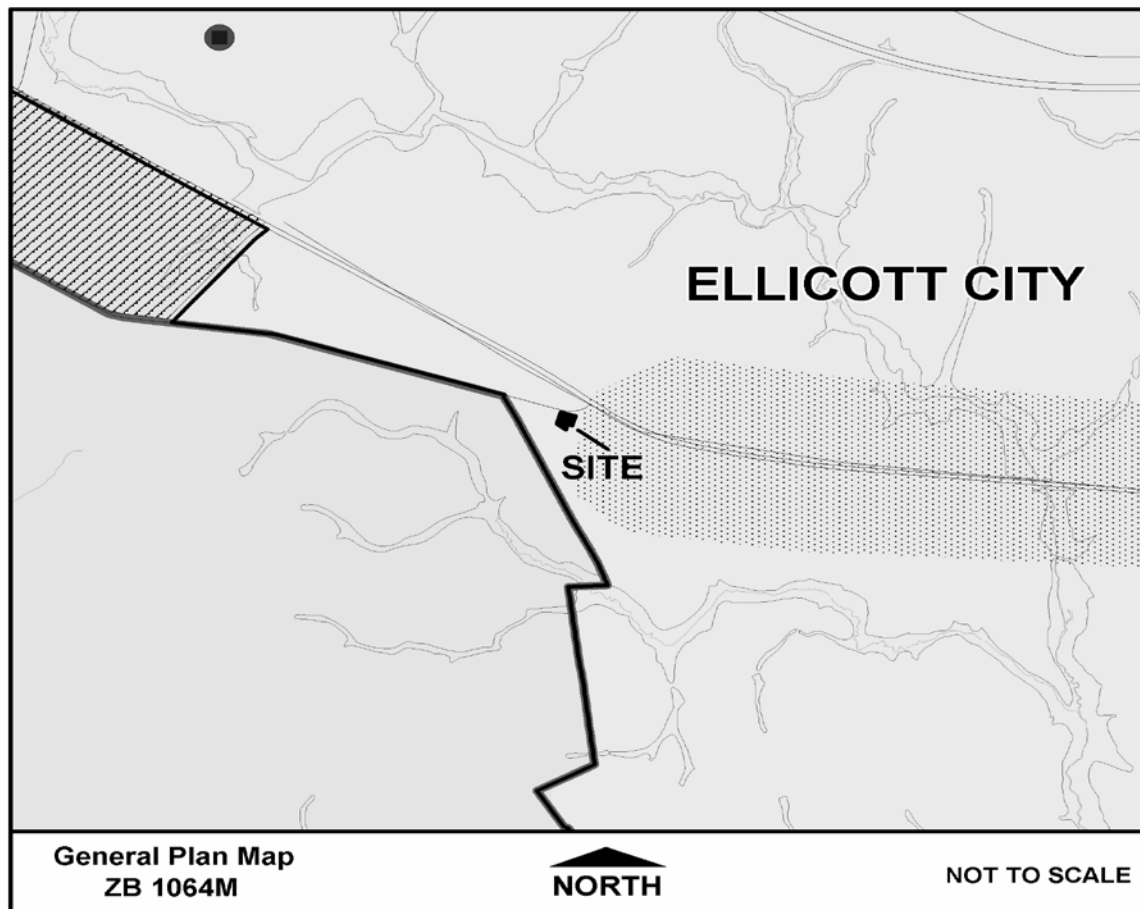
**I. DESCRIPTION OF PROPOSAL**

- # **The Petitioners define the boundaries of the neighborhood generally as Bethany Lane/Centennial Lane to the east, I-70 to the north, Marriottsville Road and Folly Quarter Road to the west, and an approximate line connecting Cameron Court to Burnside Drive to the south.**

For the Department of Planning and Zoning recommended neighborhood boundaries, please refer to the map on Page 5.

- # **On the issue of Mistake, the basic premise of the Petitioners' allegation is that at the time of the 2004 CZP, the County Council failed to recognize that the intensification of the adjoining institutional Park use, including the addition of more field lighting, the extended hours of play, and the increase in traffic generated by the use had "...rendered the [Petitioners'] property unsuitable for continued residential uses."**

The Petitioners note that the parcels located immediately to the northwest across MD 144, Parcels 10, 39 and 96, were rezoned from R-20 to the B-1 District in the 2005 Continuation of the Comprehensive Zoning Process ("Comp Lite").



PETITIONER: Thomas & Leslie Fraley

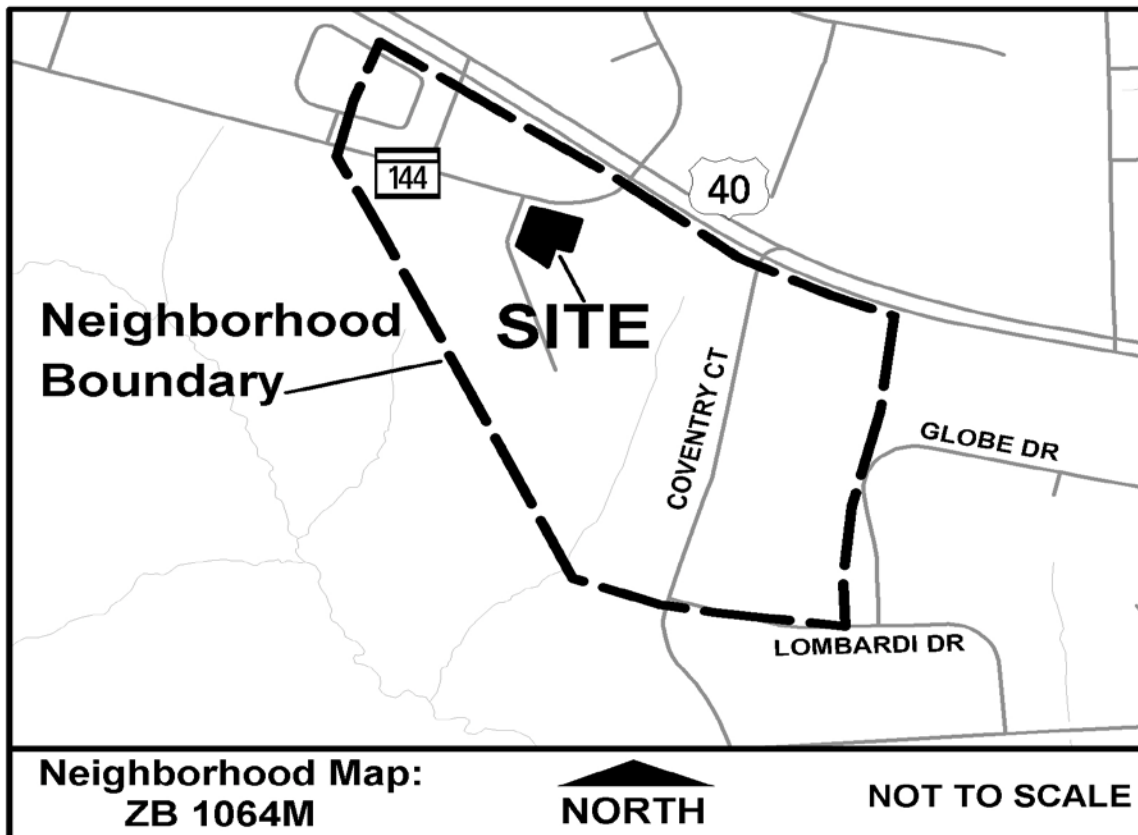
## II. ZONING HISTORY

### A. Subject Property

- # The 1954 Zoning Map depicts the zoning at the US 40 intersection with MD 144 as being zoned B-2 in an area 300 feet from the US 40 right-of-way on both the north and south sides of US 40.

This zoning map is somewhat imprecise because it does not show individual parcels and the scale is such that the entire County is on one sheet, but it is enough to conclude that this B-2 zoning, 300 feet to the south of the US 40 right-of-way, would have included most of the Property.

- # The 1961 Comprehensive Zoning Plan rezoned the Property to R-20 for the first time. A set of 1961 Land Use Maps, relatively recently discovered during the move to the temporary offices of the County government, clearly show that there was a commercial use on the Property at that time.
- # In the 1977 Comprehensive Zoning Plan, the Property was rezoned to the R (Rural) District. This R District zoning was maintained in the 1985 Comprehensive Zoning Plan.



## II. ZONING HISTORY

- # **The 1993 Comprehensive Zoning Plan returned the Property to the R-20 District. This R-20 designation was maintained in the 2004 CZP and Comp Lite.**
- # **On August 21, 2007, the Director of the Department of Planning and Zoning approved NCU 07-003, confirming that an approximately 40 foot by 50 foot frame building with a front porch located at the front of the Property near the MD 144 frontage, and the associated paved parking area around this building, is a valid nonconforming use for a general retail use.**

In that case, it was evident that the Petitioners had been operating for many years under the mistaken assumption that their Property was already zoned commercially. This assumption was largely based upon a letter issued by a former DPZ employee in 1973 to a former owner of the Property that stated that the retail commercial use of the Property was legal and valid.

### B. Adjacent Properties

- # **All the adjoining properties share the same zoning history as the Property. As noted above, the adjacent Parcels 10, 39 and 96 across MD 144 to the northwest shared this same history up to the time of Comp Lite, when they were rezoned to B-1.**

For Parcels 10 and 39, according to the Comp Lite records, both the Route 40 Task Force and the Planning Board recommended medium density residential districts for these parcels instead of the requested commercial zoning. It is noteworthy that the County Council disagreed with these recommendations and rezoned Parcel 10 and 39 to B-1, adding Parcel 96 also to B-1 by means of an amendment.

## III. BACKGROUND INFORMATION

### A. Site Description

- # **The Property has an irregular, inverted L-shape. In the northeastern area of the Property is the frame store building and the surrounding paved parking area noted in the section above concerning the nonconforming use confirmation. To the west of this area is an existing single-family detached dwelling which is apparently also used in part for office space according to statements made in the NCU 07-003 case.**

In the southeastern area of the Property, behind the store site, is a three-bay detached garage. There is another accessory building in the area generally between this garage and the dwelling. The southwestern area of the Property is predominantly an open lawn located behind the dwelling. The access to the Property from MD 144 is a very wide paved area which directly adjoins the MD 144 paving without a defined entrance or curb and gutter.

**B. Vicinal Properties**

# All adjoining properties on the south side of MD 144 and US 40 are zoned R-20. To the east of the Property is Parcel 85, which is improved with a building identified as an animal hospital use which was originally approved in the 1960s as Board of Zoning Appeals Case No. 514-C.

# Adjoining to the south and west is Parcel 73, which is approximately 24 acres and extends around both the Property and Parcel 85. Parcel 73 is owned by Howard County and is known as Kiwanis-Wallas Park, which is used predominantly for many baseball fields. The areas of Parcel 73 to the west of the Property are used for a parking lot, baseball fields, and batting cages. The areas to the south of the Property are used for a parking lot, an equipment building, a pavilion, and additional baseball fields.

The area of the Park to the east, past Parcel 85, is used for more baseball fields and parking areas, one of which may be located within the right-of-way for US 40. At the southeast area is Kiwanis Hall which is used for assembly purposes.

Past Parcel 73 to the west is farmland that is part of Doughoregan Manor. The area that adjoins Parcel 73 is the front portion of a 221 acre site, extending more than one mile to the south and southeast that is the subject of a recently submitted rezoning request, ZB 1087M, to rezone from RC-DEO to R-ED.

# To the northwest of the Property, across MD 144, are Parcel 10 and Parcel 39, which are zoned B-1 but are not currently used or developed for commercial purposes. To the north of the Property is a partially open and partially wooded, undeveloped area of land that apparently is part of the public right-of-way for the US 40 and MD 144 intersection.

**C. Roads**

# MD 144 in front of the Property has two west-bound travel lanes merging to one lane, and one east-bound lane expanding to two lanes. There is approximately 52 feet of paving within a variable-width right-of-way.

# The estimated sight distance from the general location of the paved area in front of the store is over 900 feet to the west and approximately 275 feet to the northeast to the wide intersection of MD 144 and US 40.

Precise sight distance measurements may only be determined through a detailed sight distance analysis, however.

# According to data from the State Highway Administration, the traffic volume on MD 144 west of US 40 was 8,571 ADT (average daily trips) as of 2007.

**D. Water and Sewer Service**

- # **The Property is in the Metropolitan District and is within the Existing Service Area according to the Geographic Information System Maps.**

**The Property is served by public water and sewer facilities.**

**E. General Plan**

- # **The Property is designated Residential Areas on the Policies Map 2000-2020 of the 2000 General Plan.**
- # **MD 144 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan.**

**F. Agency Comments**

- # **Upon preparing this Technical Staff Report, the agency comments received in 2006 when this case was first under consideration were not found. Accordingly, a new request for comments was sent out, but no responses have been received as of the date of this report.**

Responses that are received prior to the Planning Board meeting will be forwarded to the Planning Board individually. Any comments received that are of a substantive nature which may require an updated evaluation of this petition would be addressed in an addendum to this report.

**G. Adequate Public Facilities Ordinance**

- # **The petition is subject to the Adequate Public Facilities Ordinance. A Site Development Plan for any development on the Property is subject to the requirement to pass the test for adequate road facilities.**

**IV. EVALUATIONS AND CONCLUSIONS**

**A. Evaluation of the Petition Concerning the Mistake Rule**

- # **The Petitioners have not submitted any convincing evidence that the County Council made a bona fide mistake in designating the Property as R-20 in the 2004 CZP and Comp Lite. The Property and the adjoining Park, and the other properties further to the east were zoned R-20 at the time of the 1961 Zoning Plan, and have retained this zoning for 48 years.**

The use of the Park and even the intensification of that use over time does not indicate that retaining the R-20 zoning was a mistake, because the R-20 zoning permits this Park use. In addition, even though the Property has a legal nonconforming use for the store, this fact also does not indicate any actual mistake, because the Property also is used for residential purposes.



#### IV. EVALUATIONS AND CONCLUSIONS

##### **B. Evaluation of the Petition Concerning the Change Rule**

- # **The case made by the Petitioners concerning the subject of Change is predominantly based on the “cumulative change” that has supposedly happened in the vicinity of the Property. In particular, the Petitioners express that this change has been principally caused by the expansion and intensification of the Park use over time.**

Again, the use of the Park for a valid R-20 use cannot support an allegation of substantial change in the character of the neighborhood since the 2004 CZP. Based on historic aerial photograph evidence, the Park use was certainly in place in the early 1960s, and the longstanding continuation of this use since that time is not an indication of change in the zoning character of this area.

- # **The “neighborhood” as defined by the Petitioners is much too large for a parcel that is less than an acre. It does not have any relation to the areas beyond the immediate vicinity as it is somewhat “imbedded” into the Park, so the DPZ definition of the neighborhood boundaries is a considerably smaller area.**
- # **The zoning character of this neighborhood has remained the same since the 1961 Comprehensive Zoning Plan, except for the three B-1 properties across MD 144, but because they were rezoned to B-1 as part of a comprehensive zoning process they cannot be used as evidence to support an allegation of Change.**
- # **The Department of Planning and Zoning concludes that there has been no substantial change in the character of the neighborhood since the 2004 CZP and Comp Lite.**

The Petitioners may still continue the nonconforming commercial use on the Property in accordance with the confirmation made by the Department of Planning and Zoning, and they certainly may choose to become involved in the next Comprehensive Zoning Plan process and seek a new zoning designation in that manner. At this time, however, there is not enough basis to justify a piecemeal rezoning on the issue of Change.

##### **C. Relation to the General Plan**

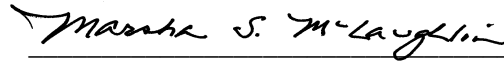
- # **The petition is contrary to the Balanced and Phased Growth Policy 5.9 to “Allow for the appropriate size, location and purpose of commercial centers”, and specifically its sub-policy to “Reaffirm the policy of past General Plans to not extend strip commercial development areas on major roads beyond their present limits.”**

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**V. RECOMMENDATION                      *DENIAL***

For the reasons noted above, the Department of Planning and Zoning recommends that the request to rezone the Property from R-20 to B-1, be **DENIED**.



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Marsha S. McLaughlin, Director

11/25/09

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Date

MM/jrl

**NOTE:**            **The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**